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No. 10-57

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

BRUCE MARKS AND MARKS, LLC
d/b/a MARKS & SOKOLOV, LLC,

Petitioners,

v.

ALFA GROUP a/k/a CROWN FINANCE FOUNDATION,
ALTIMO HOLDINGS & INVESTMENTS LTD.,
and FINANCIAL DYNAMICS LTD.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT FINANCIAL DYNAMICS LTD. AND JOINDER IN BRIEF IN OPPOSITION OF RESPONDENTS ALTIMO HOLDINGS & INVESTMENTS LTD. AND CROWN FINANCE FOUNDATION

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QUESTION PRESENTED

Financial Dynamics Ltd. joins in the Question Presented as submitted in the Brief in Opposition of Altimo Holdings & Investments Ltd. and Crown Finance Foundation.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Respondent Financial Dynamics Ltd. makes the following disclosure:

Respondent Financial Dynamics Ltd. is ultimately wholly owned by FTI Consulting, Inc., a publicly-held corporation.

INTRODUCTORY STATEMENT

Respondent Financial Dynamics Ltd. ("FD") hereby joins in the Brief in Opposition of its Co-Respondents, Altimo Holdings & Investments Ltd. ("Altimo") and Crown Finance Foundation ("CFF") and submits its own Brief in Opposition to the Petition for a Writ of Certiorari of Petitioners Bruce Marks ("Marks") and Marks, LLC d/b/a Marks & Sokolov, LLC ("M&S") (together "Petitioners").

STATEMENT OF THE CASE

A. Factual Background

FD joins in the Statement of the Case of Altimo and CFF and supplements that Statement with the following additional facts related to FD. FD is a business and communications consultancy organized under the laws of England and Wales, with its principal place of business in London. A0143.[1] FD has no office in Pennsylvania and pays no taxes there. A0143. FD owns no property and neither conducts nor is qualified to conduct business in Pennsylvania. A0143-144. FD does not provide its communications consultancy services to any clients in Pennsylvania and does not advertise its services there. A0144. The employees, records and offices of FD are all located outside Pennsylvania. A0144. FD does not have any ownership interest in any company incorporated or having a principal place of business in Pennsylvania. A0144. FD is a wholly-owned subsidiary of a U.S. corporation, FTI Consulting, Inc., a Maryland corporation with its principal place of business in

1. In this brief, "A" refers to the Joint Appendix filed with the United States Court of Appeals for the Third Circuit.

Baltimore. A0144. FD is a separate company and separate legal entity within the FTI group, with its own profit and loss account, and exercises individual control over its employees, whose salaries are paid by FD. A0144.

The Complaint alleges a single tortious action by FD: "FD disseminated the Releases *to the world-wide media* on behalf of Altimo, Alfa, Kosogov, and Fridman." A0041 (emphasis added). As defined in the Complaint, the "Releases" consisted of a press release, a letter from Altimo Chairman Kosogov to Telenor, a summary memorandum, and various attachments. A0043. The alleged defamatory statements were contained only in the summary memorandum and attachments. A0044-045.

The jurisdictional discovery provided by FD delineated the limited circulation by FD of the allegedly defamatory materials. While FD provided the admittedly non-defamatory press release and Kosogov letter only to media outlets in England and Germany, the documents claimed to contain defamatory statements were provided by FD solely to the Legal Department of the *Financial Times* in London, subject to a non-disclosure agreement. A0179-181. There is no evidence that the *Financial Times* further disseminated the documents. A0180.

B. Proceedings Below

FD joins in the recitation of the Proceedings Below of Altimo and CFF.

REASONS FOR DENYING THE PETITION

FD adopts the legal arguments as stated by Altimo and CFF and supplements those legal arguments with the following additional reasons for denying the petition.

In view of FD's lack of minimum contacts with the forum and absence of any assets in Pennsylvania, subjecting FD to jurisdiction in Pennsylvania does not comport with "traditional notions of fair play and substantial justice." *Marten v. Godwin*, 499 F.3d 290, 296 (3d Cir. 2007) (citation omitted). Moreover, FD's dissemination of the allegedly defamatory materials to the legal department of a single media representative in London, A0180, does not support Petitioners' contention that FD's allegedly tortious conduct, "disseminat[ing] the Releases *to the world-wide media*," A0041 (emphasis added), was expressly aimed at Pennsylvania or that Petitioners felt the brunt of the harm in this forum. *IMO Indus. v. Kiekert AG*, 155 F.3d 254, 265-66 (3d Cir. 1998). To the contrary, both the District Court and the Third Circuit Court of Appeals properly held that the Respondents failed to satisfy the "expressly aimed" prong of the "effects test" espoused in *Calder v. Jones*, 465 U.S. 783 (1984).

Moreover, Petitioners' efforts to manufacture a split between the Court of Appeals for the Third Circuit and the other Courts of Appeals should be ignored. On the facts presented in the Complaint, every Court of Appeals would adhere to this Court's holding in *Calder*, where Justice (later Chief Justice) Rehnquist ruled for a unanimous Court that sufficient minimum contacts to satisfy the requirements of due process existed because the allegedly libelous story concerned the California

activities of a California resident whose television career was centered in California, the article was drawn from California sources, and the brunt of the harm in terms of both emotional distress and professional reputation was suffered in California. *Id.* at 788-89. "In sum, California is the focal point both of the story and of the harm suffered. Jurisdiction over petitioners is therefore proper in California based on the 'effects' of their Florida conduct in California." *Id.* at 789 (citations omitted).

Petitioners have not and can not make any such claims about the conduct of Financial Dynamics or other Respondents in this case. The allegedly libelous material does not concern Pennsylvania activities, does not draw on Pennsylvania sources, was not published in Pennsylvania, and Pennsylvania is not the focal point of the story. Rather, the allegedly defamatory material was purportedly posted on a Russian web site, in the Russian language and the Cyrillic alphabet, by a person or persons not associated with any of the Respondents. To allow a United States District Court sitting in Pennsylvania to exercise personal jurisdiction over an English company having no other connection with Pennsylvania in such circumstances would offend all concepts of minimum contacts and due process. *Id.* at 788; *see also Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

CONCLUSION

For the foregoing reasons and those set forth in the Brief in Opposition of Altimo Holdings & Investments Ltd. and Crown Finance Foundation, the Petition should be denied.

Respectfully submitted,

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